IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3302 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PERFECT INDUSTRIES THROUGH PROPRIETOR HA PARMAR

Versus

LABHUBHAI SHIVABHAI

Appearance:

MR CL SONI for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1-9

MR MEHUL S SHAH for Respondent No. 1-9

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 02/08/2001

ORAL JUDGEMENT

The present petition is filed against the judgement and award dated 4.8.2001 passed by the learned Judge of the Labour Court, Surendranagar in Reference (LCS) No.47 of 1994 and also against the order dated 10.4.2001 passed by the learned Judge of the Labour

Court, Surendranagar in Misc. Application No.3 of 2001, whereby the request made by the present petitioner was turned down for setting aside the ex parte award. Mr.Soni, learned advocate appearing for the petitioner made available Rojkam for perusal and contended that the present petitioner was not at fault for not remaining present as the petitioner was advised by the learned advocate that, 'the petitioner shall not worry' and that 'the advocate will remain present before the Court on the date mentioned in the notice' and that he need not remain present before the Court. The petitioner keeping trust in the advocate did not remain present before the Court. Mr.Soni, learned advocate also pointed out that what is recorded by the learned Judge in para 4 of the order dated 10.4.2001 is concerned, it is not borne out from the record. He submitted that the learned Judge has erred in drawing inference that if notice of publication of the award in Reference (LCS) No.47 of 1994 was received by the Labour Court on 2.1.2001, the same must have been received by the petitioner also on the same date, i.e. 2.1.2001, because the address of the petitioner is also that of Surendranagar. Mr.Soni, learned advocate submitted that inference ought not to have been drawn and record ought to have been called for and perused before drawing such inference. Alternatively, he submitted that the learned Judge has also erred in drawing inference that contents of application (Misc. Application No.3 of 2001) are totally false inasmuch the notice of publication of the award was received by the present petitioner on 15.2.2001 while application for getting certified copy was made on 14.2.2001. Mr.Soni made available a copy of Misc. Application No.3 of 2001 for perusal of this Court and also invited attention to para 2 of the said application wherein it is stated that suddenly when the petitioner received a notice from the office of the Assistant Labour Commissioner about a breach of the award passed in Reference (LCS) No.47 of 1994, the petitioner inquired in the Labour Court. On inquiry he found that Reference (LCS) No.47 of 1994 is already decided and that he received notice regarding publication of the said award on 15.2.2001. It is required to be noted here that the application is silent about the date on which notice regarding a breach of award in Reference (LCS) No.47 of 1994 is received by the present petitioner.

2. Mr.Soni, learned advocate then contended that the award itself is not legal inasmuch as it is said in the operative part of the award that the reference of the applicants (respondent workmen) is partly allowed. The action of the present petitioner of terminating the

services of the applicants dated 8.12.1993 is declared illegal. Mr.Soni submitted that even in the award itself the learned Judge has recorded in para 2 that it is stated in the statement of claim by the applicants that the applicants were serving with the present petitioners for the last five years and that their services were terminated by an oral order on 8.12.1993. Therefore, dispute was raised before the Assistant Labour Commissioner on 27.12.1993, who asked the petitioner to reinstate the workmen by keeping dispute pending and accordingly the respondent workmen had returned to work on 28.12.1993. It is also stated that the respondent workmen had raised dispute regarding minimum wages, pay register, attendance register, identity card, etc. A complaint was filed before the Assistant Labour Commissioner, Government Labour Officer and Factory Inspector which was admitted. It is also recorded that the Factory Inspector had come for inspection on 5.1.1994. The respondent workmen were threatened to withdraw their complaint, otherwise they will be beaten. It is also recorded that the respondent workmen had also filed a Police complaint. Thereafter when the respondent workmen went for work on 7.1.1994, they were told that only after the complaint is withdrawn they will be allowed to resume duty. Mr.Soni contended that in that view of the matter termination is of 7.1.1994 and not 8.1.1993. In that view of the matter, the award is not legal and has no substance and requires to be quashed and set aside.

3. Mr.Mehul Shah, learned advocate for the respondent workmen submitted that in the present case the petitioner is trying to get benefit of alleging that it was the advocate who was at fault and not the petitioner and therefore, the matter ought to have been restored to file by granting Misc. Application No.3 of 2001 in Reference (LCS) No.47 of 1994. Mr.Shah submitted that the learned Judge has recorded in its order that it is in fact the party itself who is at fault and not the advocate. Mr.Shah pointed out that the observations of the learned Judge made in para 5 of the order dated 10.4.2001 that, "On 4.3.1998 right of cross examination was closed. Thereafter, the case was kept for evidence of the management and the advocate appearing for the management had made oral request for adjournment on several occasions and thereafter he had filed applications exhibit 15, 16, 17 & 18 mentioning the ground that 'witness is not present'. Therefore, the matter may be adjourned. Mr.Shah also pointed out that the Court has recorded that it was only thereafter that as the petitioner was not remaining present before the

Court and was not leading any evidence, right of leading evidence was closed on 7.2.2000. Thereafter, the case was posted for arguments and thereafter on 3.7.2000, after hearing the arguments of the respondent workmen the case was placed for orders. Accordingly, the order came to be passed on 10.4.2001. Mr.Shah submitted that the learned Judge has in terms recorded that since 1993 till the case was heard and decided in the year 20001, the present petitioner has not cared to remain present before the Court. Mr.Shah submitted that when the party itself is guilty of non appearance, inaction, deliberate omission or misdemeanour, the party should not get any benefit for the same. Mr.Shah relied upon a decision of the Apex Court in the matter of Salil Dutta v. T.M. & M.C. Private Ltd., reported in JT 1993 (4) SC 528. Mr.Shah relied upon para 7 wherein the Apex Court has observed as under,

> "7. The question is whether the principle of the said decision comes to the rescue of the defendant respondent herein. Firstly, in the case before us it was not an appeal preferred by an outstation litigant but a suit which was posted for final hearing seven years after the institution of the suit. The defendant is a private limited company having its registered office at Calcutta itself. The persons in-- charge of the defendant company are not rustic villagers nor they are innocent illiterates unaware of Court procedures. .. .."

4. Mr.Shah submitted that in the present case also the present petitioner is a Manager of Messrs Perfect Industries, situated at Surendranagar. Therefore, the observations of the Apex Court squarely apply to the present case and therefore, same result should also follow. He submitted that the present petition is not required to be entertained under Article 226 of 227 of the Constitution of India.

5. Mr.Shah also submitted with all vehemence at his command that in the present case when the learned Judge has come to the conclusion that the contents of Application No.3 of 2001 are false and it is so recorded by the learned Judge, no premium can be granted on the falsehood on the part of the petitioner. Mr.Shah relied upon the judgement of the Apex Court in the matter between Binod Bihar Singh v. Union of India, reported in (1993) 1 SCC 572, wherein the Apex Court has observed in para 10 as under:

".. .. That apart, the appellant, in this case, having taken a false stand on the question of receipt of the signed copy of the award to get rid of the bar of limitation, should not be encouraged to get any premium on the falsehood on his part by rejecting the plea of limitation raised by the respondent. .. .."

6. Mr.Shah, learned advocate submitted that in the present case also Misc. Application No.3 of 2001, is silent about the date of receipt of the notice which is alleged to have been received by the present petitioner alleging breach of order in Reference (LCS) No.47 of 1994. Mr.Shah submitted that if the petitioner could mention the date of having received a copy of the award on 15.2.2001, nothing prevented the petitioner from mentioning the date.

7. In light of the aforesaid discussion, no case is made out for entertaining the petition. The petition is dismissed. Notice is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

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